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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/604,121

06/26/2003

Albert Kabemba

1372.39

1120

21901

7590

07/06/2004

EXAMINER

LUU, TUYET PHUONG PHAM

SMITH & HOPEN PA  
15950 BAY VISTA DRIVE  
SUITE 220

ART UNIT

PAPER NUMBER

CLEARWATER, FL 33760

3673

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/604,121

**Applicant(s)**

KABEMBA, ALBERT

**Examiner**

Teri P. Luu

**Art Unit**

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/3/03 &amp; 10/22/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,199,234 to Srour et al. in view of U.S. Patent Publication No. 2002/0108179 to Kiser and U.S. Patent No. 6,493,888 to Salvatini et al.

Srour et al. (Srour) discloses a mattress comprising a inner shell (32) and an outer shell (34). Srour fails to teach the inner shell and the outer shell being formed of visco-elastic polyurethane material. However, Srour does disclose that the inner shell (32) is formed of "foam...although other suitable materials known in the art may be used;" and the outer shell is formed of "polyurethane foam although other suitable materials known in the art may be used." Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use visco-elastic polyurethane for the inner and outer shells since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Srour also fails to teach a fluid-based cavity encapsulated by the inner shell. Kiser discloses a cushion comprising a fluid-based cavity (25) encapsulated by a shell (12, 13). Srour

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further discloses that the cushion is "used in place of a conventional cushion having internally positioned Marshall unit or coil springs." Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the inner shell and coil springs of Srouer with the fluid-filled cushion of Kiser so as to provide "enhanced, adjustable support and comfort" to the infant.

Srouer also fails to teach a plurality of speakers in sonic communication with the fluid-based inner cavity. Salvatini et al. discloses, at col. 4, lines 35-40, a pediatric mattress comprising a speaker (28) in sonic communication with a fluid-based cavity (4). The speaker provides percussion/vibration therapy to the patient on the sleep surface. In addition, music may be played through the speaker. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a speaker in sonic communication with the fluid-filled bladder so as to provide percussion/vibration therapy to the infant.

As concerns claim 3 and 4, Srouer, as modified, fails to teach the inner shell being 2.5 inches thick and the outer shell being 4 inches thick. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the shells with the claimed thickness since applicant has not disclosed the claimed thickness solve any particle problem or is for any particular purpose, and it appears the invention would perform equally well with the thicknesses of Srouer, as modified.

As concerns claim 5, an enclosure (12) encloses the outer shell. The enclosure is a vinyl coated fabric, thus, waterproof.

As concerns claim 6, the inner cavity is comprised of shock absorbing fluid, e.g, water.

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As concerns claims 7-10, the speakers are disposed below the fluid-based inner cavity. The speakers may also be a plurality of speakers positioned anywhere along the bottom of the bladder. The speakers are connected to an audio-frequency generator which may be a separate unit.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is **(703) 305-7421**. The examiner can be best reached Monday-Friday from 6:30 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Heather Shackelford**, can be reached at **(703) 308-2978**.

Submission of your response by facsimile transmission is encouraged. Technology Center 3600's facsimile number for all official papers is **(703) 872-9306**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

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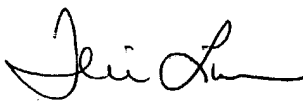
If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **heather.shackelford@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tpl  
June 21, 2004

  
**TERI PHAM LUU**  
**PRIMARY EXAMINER**